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OFFICE OF PETITIONS

In re Patent No. 7,550,283 :
Holland et al. :
Application No. 10/821,640 : LETTER REGARDING
Issue Date: June 23, 2009 : PATENT TERM ADJUSTMENT
Filed: April 9, 2004 :
Atty Docket No. 4010.3002 US1 :

This decision is in response to the "REQUEST FOR RECONSIDERATION," filed May 25, 2010. Patentee requests that the patent term adjustment be corrected from one thousand and sixty-seven (1067) days to one thousand and ninety-seven (1097) days.

The request for reconsideration of the patent term adjustment is **DISMISSED**.

On February 9, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 325 days.

On June 23, 2009, Patentee filed a submission which was treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, two hundred and thirty-four (1234) days. The June 23, 2009 submission was granted via the mailing of a decision on May 17, 2010, to the extent that it indicated that the above-identified patent is extended or adjusted by one thousand and sixty-seven (1067) days.

The decision further indicated, *in pertinent part*:


"With respect to the delay associated with the failure of the Office to issue the patent within 3 years, the patent issued 3 years and 806 days after its filing date. However, it is noted that the time consumed by the appellate review is excluded from the period of B-delay. See 35 U.S.C. § 154(b)(1)(B)(iii). Therefore, the 32-day period beginning on January 9, 2009, the date of filing of a notice of appeal and ending on February 9, 2009, the date of mailing of a subsequent notice of allowance is excluded from the period of B-delay. Moreover, the days of "A" delay beginning on January 11, 2009 and ending on February 9, 2009 overlap with the period of B-delay. As such, considering the exclusion of 32 days and the overlap of 30 days, the period of "B" delay is 744 (806 - (32 + 30)) days and thus, the revised patent term adjustment is 1067 days. (The period of 307 days of "B" delay entered at issuance is being removed and a period of 744 days of "B" delay is entered)."

Decision mailed on May 17, 2010, page 3.

With this renewed petition, Patentee has asserted that it is "inequitable to subtract" the period from January 11, 2009 to February 9, 2009 "twice." Patentee's assertion has been considered, and it has not been deemed to be persuasive. The 32-day period from January 9, 2009 to February 9, 2009 is excluded from the period of B-delay, and the 30-day period of A-delay from January 11, 2009 to February 9, 2009 overlaps with the period of B-delay. As such, it is proper to reduce the period of B delay by both the entire excluded period and the entire period of overlap, despite the fact that 30 days of the 32-day excluded period fall on the same calendar days as the overlapping period.

Pursuant to the above discussion, the PTA remains 1067 days.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanowski at (571) 272-3225.


Anthony Knight
Director
Office of Petitions